

**IT IS THE VENDOR'S RESPONSIBILITY TO
CHECK FOR ADDENDA PRIOR TO SUBMITTING PROPOSALS**

NOTICE TO BIDDERS SPECIFICATION NO.04-207

The City of Lincoln, NE intends to enter into a contract and invites you to submit a sealed bid for:

Demolition of City Owned Property at 2436 N 48th Street

Sealed bids will be received by the City of Lincoln, Nebraska on or before 12:00 noon Wednesday, August 11, 2004 in the office of the Purchasing Agent, Suite 200, K Street Complex, Southwest Wing, 440 South 8th Street, Lincoln, Nebraska 68508. Bids will be publicly opened and read at the K Street Complex.

A pre-bid/site visit conference will be held on Tuesday, August 3, 2004 at 9:00 AM at 2436 N. 48th Street, Lincoln, NE. All bidders are encouraged to attend.

Bidders should take caution if U.S. mail or mail delivery services are used for the submission of bids. Mailing should be made in sufficient time for bids to arrive in the Purchasing Division, prior to the time and date specified above. Bids may be downloaded from the City's website at www.lincoln.ne.gov Prospective bidders must monitor the bid listing for any addendums.

**SPECIAL PROVISIONS
FOR
DEMOLITION PROJECTS**

Purchasing Division
City of Lincoln, Nebraska

1. SCOPE OF WORK

1.1. Demolish City Owned property in Lincoln, Nebraska.

1.2. Legal description of property:

1.2.1. 2436 N. 48th Street - West half of Lot 4 and all of Lots 5 & 6, Block 95,
University Place

1.3. Work Requirements

1.3.1. Total clearing of the properties.

1.3.2. All buildings within the property boundaries will be demolished, foundations
and footings will be removed including the parking lot.

1.3.2.1 Retaining wall at the East property line will remain.

1.3.3. Debris will be kept in a wet condition to prevent visible emissions to the air.

1.3.4. Remove and dispose of debris at an appropriate landfill or disposal site;
fences and posts, concrete/brick/crushed rock driveways, parking surfaces,
slabs and trees/brush within the confines of the property.

1.3.5. Trees within the City right-of-way will remain.

1.3.6. Driveway aprons from street to sidewalk will remain.

1.3.7. Contractor will be responsible for protecting existing sidewalks and curbs from
damage. Damage that occurs to sidewalks or curbs will be repaired or
replaced at the Contractors expense.

1.3.8. Site shall be backfilled and compacted in accordance with LMC Chapter
20.10, Lincoln Building Code.

1.3.9. Final grading will be done to provide natural water runoff and will prepare a
smooth surface for seeding by others.

1.3.9.1 Contractor shall provide top soil.

- 1.3.10 Contractor is responsible for the removal of all wires running to and on said property(s), cap or plug all sewer, water and gas lines, etc. serving the property(s) to the satisfaction of the agency involved and as directed by the Project Manager.

2. PROJECT MANAGER

- 2.1. The Project Manager shall be Fred Little, County/City Property Management or by or through that person's duly authorized assistants.

3. SITE VISITATION AND PRE-BID CONFERENCE

- 3.1. Bidders shall inform themselves of the conditions under which the work is to be performed, concerning the site of work, the structures, obstacles which may be encountered and all other relevant matters concerning the work to be performed.
- 3.2. The Contractor will not be allowed any extra compensation by reason of any matter or thing concerning which he might fully have informed himself prior to bidding.
- 3.3. A pre-bid conference will be held at the demolition site on **Tuesday, August 3, 2004 at 9:00 AM at 2436 N. 48th Street, Lincoln, NE.** All interested bidders are urged to attend.

4. ESCALATOR CLAUSE

- 4.1. An escalator clause or any qualification of price conditions which makes it possible to bill at a price higher than price quoted will disqualify the bid, unless such maximum billing price or percentage of increase is definitely shown on the Proposal, in which case such higher price will be used for comparison of bids.

5. CONTRACT, BONDS, AND INSURANCE

- 5.1. Within fourteen (14) calendar days after the award of bid, the successful bidder must execute a written contract between the bidder and the City, which contract will incorporate the City's specification documents, and be on contract forms provided by the City.
- 5.2. Also within such period, the successful bidder must furnish construction bonds in a sum not less than the contract price, executed by the bidder and by a corporate surety company authorized to transact business in the State of Nebraska. See sample bond and commentary, attached.
- 5.3. Also within such period the successful bidder must furnish evidence of insurance in accordance with the attached "Insurance Clause to be Used for All City Contracts".

6. PAYMENT TO UNEMPLOYMENT COMPENSATION FUND

- 6.1. The Contractor and his subcontractors must pay the Unemployment Compensation Fund of the State of Nebraska, unemployment contributions and interest due under the provisions of Section 48-601 through 48-669, Nebraska Reissue revised Statutes for 1943, on wages paid to individuals employed in the performance of the contract.

7. HEALTH AND SAFETY REGULATIONS

- 7.1. The Contractor and his subcontractors shall in all respects comply with the terms and provisions of Sections 48-425 through 48-435, Nebraska Reissue Revised statutes of 1943, generally pertaining but not limited to scaffolding and flooring, and shall perform fully on behalf of the City such requirements as said sections may impose upon the City. The Contractor and his subcontractors shall likewise comply and perform with respect to any and all other applicable health and safety regulations.

8. LINCOLN MUNICIPAL CODE AND RELATED REGULATIONS, FEES, AND PERMITS

- 8.1. Demolition shall be performed in accordance with the following provisions of the Lincoln Municipal Code (LMC) and related regulations.
- 8.1.1 LMC Chapter 20.10, Lincoln Building Code, pertaining to excavations and fills, protection of pedestrians during demolition, and demolition of buildings.
- 8.1.2. LMC Chapter 14.29, pertaining to use of public streets for construction purposes.
- 8.1.3. LMC Section 17.10.120, pertaining to abandonment of utilities.
- 8.1.4. LMC Chapter 8.02, pertaining to public health and safety.
- 8.1.5. LMC Chapter 8.32, pertaining to disposal of demolition debris.
- 8.2. Contractors shall secure and pay for all permits, licenses and certificates of inspections that may be required by the City of Lincoln.

9. NOTICE TO PROCEED AND COMPLETION DATE

- 9.1. The Contractor shall not begin demolition until receiving written "Notice to Proceed" from the Project Manager.
- 9.2. Work shall begin within fifteen (15) calendar days of receipt of written notice to proceed, and shall be completed within forty-five (45) days of commencement of work, but not later than date set in contract.

10. **PRE-DEMOLITION CONFERENCES**

- 10.1. Prior to starting any work, the Contractor shall meet with the Project Manager for clarification of procedures and work to be accomplished.
- 10.2. At this time the Contractor shall present his planned work schedule together with estimated completion date.

11. **PROGRESS SCHEDULE**

- 11.1. The Contractor, immediately after being awarded the contract, shall prepare and submit for the Project Manager's approval an estimated progress schedule for the work.
- 11.2. The progress schedule shall be related to the entire project to the extent required by the Contract Documents.
- 11.3. This schedule shall indicate the dates for the starting and completion of the various states of demolition and shall be revised as required by the conditions of the work, subject to the Project Manager's approval.

12. **INSPECTIONS**

- 12.1. Inspections in general will be conducted by Project Manager.
- 12.2. The Contractor shall be responsible for contacting City Building and Safety Department for inspections required by City Codes for this type of public improvement.

13. **ACCESS AND PARKING**

- 13.1. The Contractor shall park all equipment on the demolition site during demolition, not on City right-of-way or City streets.

14. **TEMPORARY UTILITIES**

- 14.1. The Contractor shall be responsible for securing and setting up all needed temporary utilities.

15. **CLEAN UP/RECYCLE**

- 15.1. The Contractor shall be responsible for keeping the premises free of waste materials or rubbish resulting from his operations or the operations of his subcontractors.

- 15.2. The Contractor shall remove equipment, scaffolding and surplus materials from the premises when the need for keeping them on the job no longer exists.
- 15.3 The Contractor shall make every effort to recycle any and all material being demolished where it is economical to do so.
- 15.4 All salvageable materials shall become the property of the Contractor upon completion of the project.

16. DELAYS

161. With written permission of the Project Manager, the completion date may be extended if unsuitable weather or any force majeure should halt progress during the demolition period.

17. LIQUIDATED DAMAGES

- 17.1. If the Contractor fails to complete the Contract prior to the completion date, considering approved extension of time, liquidated damages will be charged for each calendar day that the work remains incomplete.
- 17.2. The amount of liquidated damages will be deducted from the money due the Contractor prior to final payment or in the case where the remaining amount due the Contractor is less than the total amount of liquidated damages, the City shall have the right to recover the difference from the Contractor or his Surety.
- 17.3. Unless specifically amended or modified by the special provisions, the schedule below shall establish the daily amount of the liquidated damages:

BID AMOUNT:

<u>MORE THAN</u>	<u>INCLUDING</u>	<u>UP TO AND</u>	<u>LIQUIDATED DAMAGES</u>
			<u>PER CALENDAR DAY</u>
0		\$ 100,000	\$ 100
100,000		500,000	200
500,000		1,000,000	300
1,000,000		AND UP	400

- 17.4. The amounts set forth in the above schedule are not to be considered punitive, but rather predetermined and reasonable amounts to compensate for the detriment to the public and to defray expenses incurred by the City due to the delay in the completion of the project.

18. ASBESTOS

18.1. In the event the City of Lincoln determines that there is asbestos within the buildings, it will be removed and disposed by others prior to demolition. Asbestos removal and disposal is not a part of the scope of this project.

19. GUARANTEE

19.1. As a minimum requirement of the City, the Contractor shall guarantee all materials and workmanship for a period of one (1) year following completion of the project.

20. ERRORS AND OMISSIONS

20.1. If any errors or omissions are found in the drawings or specifications or other documents during demolition, the Contractor shall notify the Project Manager of such error or omission, and request clarification before proceeding with the work.

BID PROPOSAL
SPECIFICATION NO. 04-207
BID OPENING TIME: 12:00 NOON
DATE: Wednesday, August 11, 2004

The undersigned, having full knowledge of the requirements of the City of Lincoln for the below listed phases and the contract documents (which include Notice, Instructions, this Proposal, Specifications, Contract, and any and all addenda) and all other conditions of the Proposal, agrees to enter into a contract with the City the below listed fees for the performance of this Specification, complete in every respect, in strict accordance with the contract documents at and for fees listed below.

ADDENDA RECEIPT: The receipt of addenda to the specification numbers _____ through _____ are hereby acknowledged. Failure of any submitter to receive any addendum or interpretation of the specifications shall not relieve the submitter from any obligations specified in the request. All addenda shall become part of the final contract document.

LUMP SUM BID \$

BID SECURITY REQUIRED: X YES *5% of bid*
NO

AFFIRMATIVE ACTION PROGRAM: Successful bidder will be required to comply with the provisions of the City's Affirmative Action Policy (Contract Compliance, Sec. 1.16). The Equal Opportunity Officer will determine compliance or non-compliance with the City's policy upon a complete and substantial review of successful bidder's equal opportunity policies, procedures and practices.

The undersigned signatory for the bidder represents and warrants that he has full and complete authority to submit this proposal to the City, and to enter into a contract if this bid proposal is accepted.

**RETURN 2 COMPLETE COPIES OF PROPOSAL AND SUPPORTING MATERIAL.
MARK OUTSIDE OF BID ENVELOPE: SEALED BID FOR SPEC. 04-178**

COMPANY NAME

BY (Signature)

STREET ADDRESS or P.O. BOX

(Print Name)

CITY, STATE ZIP CODE

(Title)

TELEPHONE No. FAX No.

(Date) _____

**EMPLOYER'S FEDERAL I.D. NO.
OR SOCIAL SECURITY NUMBER**

ESTIMATED DELIVERY DAYS

E-MAIL ADDRESS

TERMS OF PAYMENT

Bids may be inspected in the Purchasing Division offices during normal business hours, **after** tabulation by the purchasing agent. If you desire a copy of the bid tabulation to be mailed to you, you must enclose a self-addressed stamped envelope with your bidding documents. Bid tabulations can also be viewed on our website at: lincoln.ne.gov Keyword: Bid

INSTRUCTIONS TO BIDDERS

CITY OF LINCOLN, NEBRASKA PURCHASING DIVISION

1. BIDDING PROCEDURE

- 1.1 Bidder shall submit two (2) complete sets of the bid documents and all supporting material. All appropriate blanks shall be completed. Any interlineation, alteration or erasure on the specification document shall be initialed by the signer of the bid. Bidder shall not change the proposal form nor make additional stipulations on the specification document. Any amplified or qualifying information shall be on the bidder's letterhead and firmly attached to the specification document.
- 1.2 Bid prices shall be submitted on the Proposal Form included in the bid document.
- 1.3 Bidders may submit a bid on an "all or none" or "lump sum" basis, but should also submit a quotation on an item-by-item basis. Bidding documents shall be clearly marked indicating the kind of proposal being submitted.
- 1.4 Each bid must be legibly printed in ink or by typewriter, include the full name, business address, and telephone number of the bidder; and be signed in ink by the bidder.
- 1.5 A bid by a firm or organization other than a corporation must include the name and address of each member.
- 1.6 A bid by a corporation must be signed in the name of such corporation by a duly authorized official thereof.
- 1.7 Any person signing a bid for a firm, corporation, or other organization must show evidence of his authority so to bind such firm, corporation, or organization.
- 1.8 Bids received after the time and date established for receiving bids will be rejected.

2. BIDDER'S SECURITY

- 2.1 Bid security, as a guarantee of good faith, in the form of a certified check, cashier's check, or bidder's bond, may be required to be submitted with this bid document, as indicated on the Proposal Form.
- 2.2 If alternate bids are submitted, only one bid security will be required, provided the bid security is based on the amount of the highest gross bid.
- 2.3 Such bid security will be returned to the unsuccessful bidders when the award of bid is made.
- 2.4 Bid security will be returned to the successful bidder(s) as follows:
 - 2.4.1 For single order bids with specified quantities: upon the delivery of all equipment or merchandise, and upon final acceptance by the City.
 - 2.4.2 For all other contracts: upon approval by the City of the executed contract and bonds.
- 2.5 City shall have the right to retain the bid security of bidders to whom an award is being considered until either:
 - 2.5.1 A contract has been executed and bonds have been furnished.
 - 2.5.2 The specified time has elapsed so that the bids may be withdrawn.
 - 2.5.3 All bids have been rejected.

- 2.6 Bid security will be forfeited to the City as full liquidated damages, but not as a penalty, for any of the following reasons, as pertains to this specification document:

- 2.6.1 If the bidder fails to deliver the equipment or merchandise in full compliance with the accepted proposal and specifications.
- 2.6.2 If the bidder fails or refuses to enter into a contract on forms provided by the City, and/or if the bidder fails to provide sufficient bonds or insurance within the time period as established in this specification document.

3. EQUAL OPPORTUNITY

- 3.1 Each bidder agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age, or marital status. Bidder shall fully comply with the provisions of Chapter 11.08 of the Lincoln Municipal Code.
- 3.2 Successful bidder will be required to comply with the provisions of the City's Affirmative Action Policy (Contract Compliance, Sec. 1.16).
- 3.3 The Equal Opportunity Officer will determine compliance or non-compliance with the City's Affirmative Action Policy upon a complete and substantial review of successful bidder's equal opportunity policies, procedures and practices.

4. DATA PRIVACY

- 4.1 Bidder agrees to abide by all applicable State and Federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.
- 4.2 The bidder agrees to hold the City harmless from any claims resulting from the bidder's unlawful disclosure or use of private or confidential information.

5. BIDDER'S REPRESENTATION

- 5.1 Each bidder by signing and submitting a bid, represents that the bidder has read and understands the specification documents, and the bid has been made in accordance therewith.
- 5.2 Each bidder for services further represents that the bidder is familiar with the local conditions under which the work is to be done and has correlated the observations with the requirements of the bid documents.

6. INDEPENDENT PRICE DETERMINATION

- 6.1 By signing and submitting this bid, the bidder certifies that the prices in this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder prior to bid opening directly or indirectly to any other bidder or to any competitor; no attempt has been made, or will be made, by the bidder to induce any person or firm to submit, or not to submit, a bid for the purpose of restricting competition.

7. CLARIFICATION OF SPECIFICATION DOCUMENTS

- 7.1 Bidders shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of the specification documents.
- 7.2 Bidders desiring clarification or interpretation of the specification documents shall make a written request which must reach the Purchasing Agent at least seven (7) calendar days prior to the date and time for receipt of bids.
- 7.3 Interpretations, corrections and changes made to the specification documents will be made by written addenda.
- 7.4 Oral interpretations or changes to the Specification Documents made in any other manner, will not be binding on the City; and bidders shall not rely upon such interpretations or changes.

8. ADDENDA

- 8.1 Addenda are written instruments issued by the City prior to the date for receipt of bids which modify or interpret the specification document by addition, deletion, clarification or correction.
- 8.2 Addenda will be mailed or delivered to all who are known by the City to have received a complete set of specification documents.
- 8.3 Copies of addenda will be made available for inspection at the office of the Purchasing Agent.
- 8.4 No addendum will be issued later than forty-eight (48) hours prior to the date and time for receipt of bids, except an addendum withdrawing the invitation to bid, or an addendum which includes postponement of the bid.
- 8.5 Bidders shall ascertain prior to submitting their bid that they have received all addenda issued, and they shall acknowledge receipt of addenda on the proposal form.

9. ANTI-LOBBYING PROVISION

- 9.1 During the period between the bid close date and the contract award, bidders, including their agents and representatives, shall not directly discuss or promote their bid with any member of the City Council or City Staff except in the course of City-sponsored inquiries, briefings, interviews, or presentations, unless requested by the City.

10. BRAND NAMES

- 10.1 Wherever in the specifications or proposal form brand names, manufacturer, trade name, or catalog numbers are specified, it is for the purpose of establishing a grade or quality of material only; and the term "or equal" is deemed to follow.
- 10.2 It is the bidder's responsibility to identify any alternate items offered in the bid, and prove to the satisfaction of the City that said item is equal to, or better than, the product specified.
- 10.3 Bids for alternate items shall be stated in the appropriate brand on the proposal form, or if the proposal form does not contain blanks for alternates, bidder MUST attach to the specification documents on Company letterhead a statement identifying the manufacturer and brand name of each proposed alternate, plus a complete description of the alternate items including illustrations, performance test data and any other information necessary for an evaluation. The bidder must indicate any variances by item number

from the specification document no matter how slight. Bidder must fully explain the variances from the specification document, since brochure information may not be sufficient.

- 10.4 If variations are not stated in the proposal, it will be assumed that the item being bid fully complies with the City's specifications.

11. DEMONSTRATIONS/SAMPLES

- 11.1 Bidders shall demonstrate the exact item(s) proposed within seven (7) calendar days from receipt of such request from the City.
- 11.2 Such demonstration can be at the City delivery location or a surrounding community.
- 11.3 If bidder does not have an item in the area, it will be at the bidder's expense to send appropriate City personnel to the nearest location to view and inspect proposed item(s).
- 11.4 If items are small and malleable, and the bidder is proposing an alternate product, the bidder MUST supply a sample of the exact item. Samples will be returned at bidder's expense after receipt by the City of acceptable goods. Bidders must indicate how samples are to be returned.

12. DELIVERY

- 12.1 Each bidder shall state on his proposal form the date upon which he can make delivery of all equipment or merchandise. Time required for delivery is hereby made an essential element of the bid.
- 12.2 The City reserves the right to cancel orders, or any part thereof, without obligation, if delivery is not made within the time(s) specified on the proposal form.
- 12.3 All bids shall be based upon **inside** delivery of the equipment or merchandise F.O.B. the City at the location specified by the City, with all transportation charges paid.

13. WARRANTIES, GUARANTEES AND MAINTENANCE

- 13.1 Copies of the following documents must accompany the bid proposal for all items being bid:
 - 13.1.1 Manufacturer's warranties and/or guarantees.
 - 13.1.2 Bidder's maintenance policies and associated costs.
- 13.2 As a minimum requirement of the City, the bidder will guarantee in writing that any defective components discovered within a one (1) year period after the date of acceptance shall be replaced at no expense to the City. Replacement parts of defective components shall be shipped at no cost to the City. Shipping costs for defective parts required to be returned to the bidder shall be paid by the bidder.
- 13.3 Bidder Warrants and represents to the City that all software/firmware/hardware/equipment /systems developed, distributed, installed or programmed by Bidder pursuant to this Specification and Agreement.
 - 13.3.1 That all date recognition and processing by the software/firmware/hardware/equipment/system will include the four-digit-year format and will correctly recognize and process the date of February 29, and any related data, during Leap years; and
 - 13.3.2 That all date sorting by the software /firmware/hardware/ equipment/system that includes a "year category" shall be done based on the four-digit-year format. Upon being notified in writing by the City of the failure of any software/ firmware/

hardware /equipment /systems to comply with this Specification and Agreement, Contractor will, within 60 days and at no cost to the City, replace or correct the non-complying software/ firmware/ hardware/ equipment/ systems with software/firmware/ hardware/equipment/ systems that does comply with this Specification and Agreement.

- 13.3.3 No Disclaimers: The warranties and representations set forth in this section 13.3 shall not be subject to any disclaimer or exclusion of warranties or to any limitations of Licensor's liability under this Specification and Agreement.

14. ACCEPTANCE OF MATERIAL

- 14.1 All components used in the manufacture or construction of materials, supplies and equipment, and all finished materials, shall be new, the latest make/model, of the best quality, and the highest grade workmanship.
- 14.2 Material delivered under this proposal shall remain the property of the bidder until:
- 14.2.1 A physical inspection and actual usage of this material is made and found to be acceptable to the City; and
- 14.2.2 Material is determined to be in full compliance with the specifications and accepted proposal.
- 14.3 In the event the delivered material is found to be defective or does not conform to the specification documents and accepted proposal, then the City reserves the right to cancel the order upon written notice to the bidder and return materials to the bidder at bidder's expense.
- 14.4 Successful bidder shall be required to furnish title to the material, free and clear of all liens and encumbrances, issued in the name of the City of Lincoln, Nebraska, as required by the specification documents or purchase orders.
- 14.5 Selling dealer's advertising decals, stickers or other signs shall not be affixed to equipment. Vehicle mud flaps shall be installed blank side out with no advertisements. Manufacturer's standard production forgings, stampings, nameplates and logos are acceptable.

15. BID EVALUATION AND AWARD

- 15.1 The signed bid proposal shall be considered an offer on the part of the bidder. Such offer shall be deemed accepted upon issuance by the City of purchase orders, contract award notifications, or other contract documents appropriate to the work.
- 15.2 No bid shall be modified or withdrawn for a period of ninety (90) calendar days after the time and date established for receiving bids, and each bidder so agrees in submitting the bid.
- 15.3 In case of a discrepancy between the unit prices and their extensions, the unit prices shall govern.
- 15.4 The bid will be awarded to the lowest responsive, responsible bidder whose proposal will be most advantageous to the City, and as the City deems will best serve their requirements.
- 15.5 The City reserves the right to accept or reject any or all bids; to request rebids; to award bids item-by-item, by groups, or "lump sum"; to waive irregularities and technicalities in bids; such as shall best serve the requirements and interests of the City.

16. INDEMNIFICATION

- 16.1 The bidder shall indemnify and hold harmless the City, its members, its officers and employees from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees arising out of or resulting from the performance of the contract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than goods, materials and equipment furnished under this contract) including the loss or use resulting therefrom; is caused in whole or part by any negligent act or omission of the bidder, any subcontractor, or anyone directly or indirectly employed by any one of them or anyone for whose acts made by any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.
- 16.2 In any and all claims against the City or any of its members, officers or employees by an employee of the bidder, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 16.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the bidder or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

17. TERMS OF PAYMENT

- 17.1 Unless other specification provisions state otherwise, payment in full will be made by the City within thirty (30) calendar days after all labor has been performed and all equipment or other merchandise has been delivered, and all such labor and equipment and other materials have met all contract specifications.

18. LAWS

- 18.1 The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this proposal and any agreement reached as a result of this process.

19. AFFIRMATIVE ACTION

- 19.1 The City of Lincoln-Lancaster County Purchasing Division provides equal opportunity for all bidders and encourages minority businesses and women's business enterprises to participate in our bidding process.

20. LIVING WAGE

- 20.1 The bidders agree to pay all employees employed in the performance of this contract, a base wage of not less than the City Living Wage per section 2.81.010 of the Lincoln Municipal Code. This wage is subject to change up or down every July.

CONTRACT DOCUMENTS

CITY OF LINCOLN

NEBRASKA

CITY OF LINCOLN, NEBRASKA

CONTRACT AGREEMENT

THIS CONTRACT, made and entered into this ____ day of _____, 2004, by and between _____ hereinafter called contractor, and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called the City.

WITNESS, that:

WHEREAS, the City has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit:

_____ and,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the City, in the manner and at the time specified, a sealed Proposal in accordance with the terms of said advertisement; and,

WHEREAS, the City, in the manner prescribed by law has publicly opened, read aloud, examined, and canvassed the Proposals submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal, a copy thereof being attached to and made a part of this Contract;

EQUAL EMPLOYMENT OPPORTUNITY: In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the agreements herein contained, the Contractor and the City have agreed and hereby agree as follows:

The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other construction accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute construct, and compete all Work included in and covered by the City's award of this Contract to the Contractor, such award being based on the acceptance by the City of the Contractor's Proposal, or part thereof, as follows:

The City agrees to pay to the Contractor for the performance of the Work embraced in this Contract, the Contractor agrees to accept as full compensation therefor, the following sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided by the City:

\$

CONTRACT AGREEMENT

The Work included in this Contract shall begin as soon as possible from date of executed contract. The completion shall be _____.

GUARANTEE:

A performance bond in the full amount of the contract shall be required for all construction contracts. This bond shall remain in effect during the guarantee period as stated in the specifications.. Once the project is completed, the contractor may submit a maintenance bond in place of the performance bond.

The Contract Documents comprise the Contract, and consist of the following:

1. The Instructions to Bidders
2. The Accepted Proposal
3. The Contract Agreements
4. The Specifications
- *5. The City of Lincoln Standard Specifications for Municipal Construction
 - a. General Conditions
 - b. General Specifications
 - c. Construction & Materials Specifications
- ** 6. The Plans (including the Schedule of Approximate Quantities)
7. The Construction Bonds
8. The Special Provisions

* If project includes paving, water, sewer, sidewalk, lighting or traffic signal work, the City of Lincoln Standard Specifications for Municipal Construction will apply, which are on file in the office of the City Clerk. Copies may be obtained at the Office of the City Engineer.

** The following is an enumeration of the Plans, which are entitled:

CONTRACT AGREEMENT

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and the are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the City hereby agree that all the terms and conditions of this Contract shall by these presents be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the City do hereby execute this contract.

EXECUTION BY THE CITY OF LINCOLN, NEBRASKA

ATTEST:

CITY OF LINCOLN, NEBRASKA

City Clerk

Mayor

Approved by Executive or No. _____
dated _____

EXECUTION BY CONTRACTOR

IF A CORPORATION:

Name of Corporation

(Address)

ATTEST:

Secretary (SEAL)

By: _____
Duly Authorized Official

Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

Name of Organization

Type of Organization

(Address)

By: _____
Member

By: _____
Member

IF AN INDIVIDUAL:

Name

Address

Signature

A. GENERAL INFORMATION

There are two types of construction bonds that are required by statutes for public work in many jurisdictions and are widely used for other projects as well.

Construction Performance Bond

Construction Payment Bond

The Construction Performance Bond is an instrument that is used to assure the availability of funds to complete the construction.

The Construction Payment Bond is an instrument that is used to assure the availability of sufficient funds to pay for labor, materials and equipment used in the construction. For public work the Construction Payment Bond provides rights of recovery for workers and suppliers similar to their rights under the mechanics lien laws applying to private work.

The objective underlying the re-writing of construction bond forms was to make them more understandable to provide guidance to users. The intention was to define the rights and responsibilities of the parties, without changing the traditional rights and responsibilities that have been decided by the courts. The new bond forms provide helpful guidance regarding time periods for various notices and actions and clarify the extent of available remedies.

The concept of pre-default meeting has been incorporated into the Construction Performance Bond. All of the participants favored early and informal resolution of the problems that may precipitate a default, but some Surety companies were reluctant to participate in pre-default settings absent specific authorization in the bond form.

The responsibilities of the Owner and the options available to the Surety when a default occurs are set forth in the Construction Performance Bond. Procedures for making a claim under the Construction Payment Bond are set forth in the form.

EJCDC recommends the use of two separate bonds rather than a combined form. Normally the amount of each bond is 100 percent of the contract amount. The bonds have different purposes and are separate and distinct obligations of the Surety. The Surety Association reports that the usual practice is to charge a single premium for both bonds and there is no reduction in premium for using a combined form or for issuing one bond without the other.

B. COMPLETING THE FORMS

Bonds have important legal consequences; consultation with an attorney and a bond specialist is encouraged with respect to federal, state and local laws applicable to bonds and with respect to completing or modifying the bond forms.

Both bond forms have a similar format and the information to be filled in is ordinarily the same on both bonds. If modification is necessary, the modifications may be different.

The bond forms are prepared for execution by the Contractor and the Surety. Evidence of authority to bind the Surety is usually provided in the form of a power of attorney designating the agent who is authorized to sign on behalf of the Surety. The power of attorney should be filed with the signed bonds.

Each bond must be executed separately since they cover separate and distinct obligations.

Preferably the bond date should be the same date as the contract, but in no case should the bond date precede the date of the contract.

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal
Place of Business):

Owner (Name and Address):

City of Lincoln

555 South 10th St.

Lincoln, NE 68508

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

EJCDC NO. 1910-28a (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
 - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and
 - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors: or
 - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable after the amount is determined tender payment therefor to the Owner; or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
 - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place
Of Business):

Owner (Name and Address):

City of Lincoln
555 South 10th St.
Lincoln, NE 68508

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount: \$

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

EJCDC NO. 1910-28B (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
 2. With respect to the Owner, this obligation shall be null and void if the Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
 3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
 4. The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with the Contractor:
 1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and
 2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
 5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
 6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
 7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
 8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.
- By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
 11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
 12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
 14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
 15. DEFINITIONS
 - 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
 - 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.